

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



January 10, 2006

Agenda ID #5260  
Ratesetting

TO: PARTIES OF RECORD IN RULEMAKING 03-10-003

This is the draft decision of Administrative Law Judge (ALJ) Malcolm. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN  
Angela K. Minkin, Chief  
Administrative Law Judge

ANG:hl2

Attachment

Decision **DRAFT DECISION OF ALJ MALCOLM (Mailed 1/11/2006)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement  
Portions of AB 117 Concerning Community  
Choice Aggregation.

Rulemaking 03-10-003  
(Filed October 2, 2003)

**OPINION MODIFYING APPENDIX B OF DECISION 05-12-041**

The Commission recently issued Decision (D.) 05-12-041, adopting rules and policies for Community Choice Aggregation (CCA) in Phase II of this proceeding. This order slightly modifies Appendix B of that order to reflect the intent of the Commission.

**Background and Discussion**

Assembly Bill (AB) 117 directed the Commission to develop a program which would permit local agencies, called "CCAs," to purchase power on behalf of local residents and businesses. In fulfillment of AB 117, the Commission has issued two orders in this docket, D.04-12-046 and D.05-12-041.

One of the issues raised in Phase II of this proceeding was the extent to which a CCA would be permitted to change the date it plans to initiate service to customers once it had made a binding commitment to the utility. D.05-12-041 addresses the issue in Section B of Appendix B, which states "In a subsequent Open Season that takes place prior to the CCA commencing service to its customers, the participating CCA may update its service commencement date." This language was included in the Administrative Law Judge's (ALJ) proposed decision. All parties that addressed this issue in their comments on the proposed

decision, including the utilities, CCAs and The Utility Reform Network, agreed that it would not be reasonable to permit a CCA to change its commencement date without some restrictions. Such unrestricted changes to the CCA's commencement date could put an unreasonable burden on the utility in procurement planning and power purchasing decisions. Associated costs could become unreasonable liabilities for utility bundled customers.<sup>1</sup>

This order modifies D.05-12-041 to permit a CCA to change its commencement date in an open season following its binding commitment for a period of up to three months, as the utilities suggested in their comments to the proposed Phase II decision.

### **Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_.

### **Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Kim Malcolm is the assigned ALJ in this proceeding.

---

<sup>1</sup> Due to oversight, the revision required to reflect these comments was not made in time for the Commission's vote on D.05-12-041. However, the revision is substantive and therefore is considered by the full Commission (as opposed to being handled by the Executive Director under Resolution A-4861).

**Findings of Fact**

1. D.05-12-041 inadvertently included language in Appendix B that could be interpreted to permit CCAs to modify their commencement dates without restriction, contrary to the Commission's intent.

2. Permitting a CCA to change its commencement date without restriction would place an unreasonable burden on the utilities with regard to procurement planning, which could affect utility bundled customers.

**Conclusion of Law**

D.05-12-041 should be modified to permit a CCA to change its commencement date by up to three months during an open season that occurs after it has signed a binding commitment.

**O R D E R**

**IT IS ORDERED** that the first sentence of Section B of Appendix B in Decision 05-12-041 is amended to say "In a subsequent open season that takes place prior to the CCA commencing service to its customers, the participating CCA may update its service commencement date by up to three months."

This order is effective today.

Dated \_\_\_\_\_ at San Francisco, California.